THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 23344 of 2007

Dated: 05.11.2007

Between:

Korrai Simhadramma
& others.

... Petitioners

AND

The Greater Visakhapatnam Municipal Corporation
Rep., by its Commissioner, Visakhapatnam
& another.

... Respondents

Counsel for the petitioners : Sri P. Satyanarayana

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 23344 of 2007

ORDER:-

This writ petition is filed for a writ of mandamus to declare the inaction of the respondents in conducting enquiry and taking action for issuing property tax passbook in favour of the petitioners by making necessary entries in the property tax book maintained by respondent No.1, as illegal and arbitrary. The petitioners also questioned inclusion of the name of respondent No.2 in the property register apart from seeking a direction to cancel the tax passbook issued in his favour.

The averments contained in the affidavit filed in support of the writ petition show that the father-in-law of petitioner No.1, late Korrai Appalaswamy purchased an extent of 300 square yards of house site in ward No.19, Nowroji Road of Visakhapatnam Municipal Corporation (for short, 'the Corporation') in the year 1959 under a registered sale deed from Regani Pollayya and four others. During his lifetime, he executed an unregistered Will dated 20.04.1960 bequeathing 160 and 140 square yards of site in favour of the husband of petitioner No.1 and respondent No.2 respectively, who were the two sons of the deceased, late Korrai Appalaswamy; that the mother-in-law of petitioner No.1 executed registered relinquishment deed dated 02.02.1972 for 140 square yards in favour of the husband of petitioner No.1 on behalf of respondent No.2, who was evidently a minor at that time, for a consideration of Rs.500/-; that the husband of petitioner No.1

constructed two houses bearing door Nos. 14-1-8- and 14-1-81 and that property tax was assessed and property tax passbook was issued in his name.

It is further averred that in the year 1995, the husband of petitioner No.1 permitted respondent No.2 and his wife to live in a portion of the house bearing door No.14-1-80 on sympathetic consideration without receiving any rent and that the 1st petitioner's husband died on 21.06.2004 leaving behind him herself and petitioner Nos.2 to 5 as his children. It is further averred that respondent No.2 made his name entered in the municipal records as owner of the house bearing door No.14-1-80 by creating unregistered documents of partition with his late brother. Petitioner No.1 made a representation on 17.08.2004 raising objections for issuing house tax passbook in favour of respondent No.2. Again on 03.09.2007, petitioner No.1 got a notice issued through her local advocate to respondent No.1 to delete the name of respondent No.2 in the property tax book. It is also averred that when respondent No.2 disputed the rights of the petitioners in respect of house bearing No.14-1-80, the petitioners filed O.S.No.1276 of 2004d on the file of Principal Senior Civil Judge, Visakhapatnam for declaration that relinquishment deed dated 02.02.1972 is valid and binding on respondent No.2 and for consequential relief of recovery of possession of house bearing door No.14-1-80 and that the said suit was dismissed by the civil Court by its judgment dated 02.07.2007. The petitioner further averred that an appeal filed against the said judgment before the District Court, Visakhapatnam is pending.

Heard Sri P. Satyanarayana, learned counsel for the petitioners.

From the pleadings referred to above, it is clear that there was a title dispute between the petitioners on one side and respondent No.2 on the other. The sole basis on which the

petitioners are claiming title over the property bearing door No.14-1-80 is the alleged relinquishment deed dated 02.02.1972. On the petitioners' own showing, as evident from the averments contained in the affidavit, they have filed civil suit and failed to persuade the civil Court to grant a decree in their favour. Being un-successful in the suit, they filed an appeal and the same is pending before the District Court, Visakhapatnam. During the pendency of the suit, respondent No.1 appeared to have entered the name of respondent No.2 in the relevant registers maintained by it showing him as the owner of the property in dispute. The petitioners have not amended the suit to seek relief against the said action of respondent No.1. Since the sole basis on which the petitioners are claiming title to the property is the alleged relinquishment deed and they failed to get a decree in their favour on the strength of the said deed, I do not see any justification at this stage for the petitioners to claim that their names should be shown in the property registers of respondent No.1 Corporation in place of respondent No.2.

For the reasons best known to the petitioners, they have withheld the judgment of the civil Court from being filed in this writ petition as a document. Be that as it may, as the petitioners themselves admitted that they have lost the suit filed on the basis of the alleged relinquishment deed, I do not see any illegality in the entries made by respondent No.1 Corporation in favour of respondent No.2. It is needless to observe that the respective rights of the parties will be governed by the outcome of the appeal pending before the District Court. In the event the petitioners succeed in the civil Court, it is always open to them to approach respondent No.1 with an appropriate application for correction of entries in the property registers.

With the above observation, the writ petition is dismissed.

As a sequel to dismissal of the writ petition,

WPMP.No.30418 of 2007 filed by the petitioners is also dismissed.

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C.V. NAGARJUNA REDDY, J

Date: 05.11.2007
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